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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

16 NATALIYA BORCHENKO, On
17 Behalf of Herself and All Others
18 Similarly Situated,

19 Plaintiff,

20 v.

21 L'ORÉAL USA, INC., a Delaware
22 corporation,

23 Defendant.

Case No.:

CLASS ACTION COMPLAINT FOR:

**VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.***

1 Plaintiff Nataliya Borchenko brings this action on behalf of herself and all
2 others similarly situated against Defendant L'Oréal USA, Inc., and states:

3
4 **NATURE OF ACTION**

5 1. Throughout the applicable limitations period, Defendant has
6 manufactured, marketed, sold, and distributed several skin care products under its
7 Garnier brand. These products include: (1) Garnier SkinActive Ultra-Lift Anti-
8 Wrinkle Firming Night Cream, (2) Garnier SkinActive Ultra-Lift Anti-Wrinkle
9 Firming Daily Moisturizer, (3) Garnier SkinActive Ultra-Lift Anti-Wrinkle
10 Firming Eye Cream, and (4) Garnier SkinActive Ultra-Lift Wrinkle Reducer 2-
11 in-1 Serum + Moisturizer (the "Products").¹ The Products are sold online and in
12 virtually every major food, drug, and mass retail outlet including, but not limited
13 to Walgreens, CVS, Walmart, and Rite Aid. The Products retail for
14 approximately \$15.00.

15 2. On the front of each and every Product package, where consumers
16 cannot miss it, Defendant represents that the Products will reduce wrinkles. On the
17 front of the Night Cream, Daily Moisturizer, and Eye Cream, Defendant represents
18 that the products are "Anti-Wrinkle" products. The front of the Daily Moisturizer
19 further represents that it "Reduces wrinkles ... in just 5 days" and the front of the
20 Eye Cream represents that it "Reduces crow's feet". Similarly, Defendant
21 represents on the front of the 2-in-1 Serum + Moisturizer that it is a "Wrinkle
22 Reducer". The Daily Moisturizer, 2-in-1 Serum + Moisturizer, and Night Cream
23 further represent that they "reduce[]" wrinkles, while the Eye Cream represents that
24 "Wrinkles are reduced". These representations are collectively referred to as the
25 "anti-wrinkle representations".

26 3. On the front of each and every Product package, where consumers

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¹ Plaintiff reserves the right to add other products upon completion of discovery.

1 cannot miss it, Defendant also represents that the Products will “lift” the skin, by
2 branding them as “Ultra-Lift” products. The front of the Daily Moisturizer further
3 represents that it “lifts in just 5 days” and the front of the Eye Cream represents that
4 it “lifts”. These representations are collectively referred to as the “lift
5 representations”.

6 4. On the front of each and every Product package, where consumers
7 cannot miss it, Defendant also represents that the Products will “firm” or “tighten”
8 the skin. Specifically, on the front of the Daily Moisturizer, Eye Cream, and Night
9 Cream, Defendant represents that the products are “Firming” products, while it
10 represents on the front of the 2-in-1 Serum + Moisturizer that the product “firms”
11 the skin. The front of the Daily Moisturizer further represents that it “firms ... in
12 just 5 days” and the front of the Eye Cream represents that it “tightens”. These
13 representations are collectively referred to as the “firming representations”.

14 5. Defendant further represents on the Product labels that the Products
15 will “restore” or “improve” skin elasticity. Specifically, Defendant represents that
16 the Daily Moisturizer, Night Cream, and 2-in-1 Serum + Moisturizer products
17 “restore skin’s elasticity” and that the Eye Cream and 2-in-1 Serum + Moisturizer
18 “improv[e] elasticity” (collectively, the “elasticity representations”).

19 6. The anti-wrinkle, lift, firming, and elasticity representations are
20 collectively referred to as the “skin structural representations” or “unlawful
21 representations”. By means of the skin structural representations, the Products
22 claim to affect the structure of consumers’ skin, making the Products “drugs” as
23 defined by California’s Sherman Food, Drug, and Cosmetic Law (“Sherman Law”).
24 Cal. Health & Safety Code § 109925(c).

25 7. Importantly, the “anti-wrinkle”, “lift”, and “firming” representations
26 on the front of the Product labels, to which all consumers are necessarily exposed,
27 as well as the elasticity representations, are stand-alone representations and are not
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1 qualified by words such as “appearance” or “look” leading consumers to believe the
2 Products will affect the structure and function of their skin by lifting and firming
3 the skin and restoring its elasticity, thus preventing new wrinkles from forming, and
4 eliminating existing wrinkles as opposed to temporarily affecting the “appearance”
5 or “look” of the skin and wrinkles. Depending on the particular Product, Defendant
6 promises skin structural results in anywhere from 5 days to 8 weeks.

7 8. Cosmetics cannot be marketed as skin structure altering drugs without
8 pre-approval from the FDA through the New Drug Application process unless they
9 conform to a “monograph” for a particular drug category, as established by the
10 FDA’s Over-the-Counter (OTC) Drug Review. Monographs identify approved
11 ingredients for specified uses generally recognized as safe and effective, and not
12 misbranded. U.S. FOOD & DRUG ADMINISTRATION, *Is It a Cosmetic, a Drug,
13 or Both? (Or Is It Soap?)*, available at
14 [https://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm074201.](https://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm074201.htm)
15 [htm](https://www.fda.gov/Cosmetics/GuidanceRegulation/LawsRegulations/ucm074201.htm). Products containing active ingredients that are nonmonograph cannot be
16 marketed to the public without an approved New Drug Application that requires,
17 *inter alia*, that Defendant present evidence that the products are safe and effective
18 for their represented uses. U.S. FOOD & DRUG ADMINISTRATION, *Over-the-*
19 *Counter (OTC) Drug Monograph Process*, available at
20 [https://www.fda.gov/drugs/developmentapprovalprocess/howdrugsaredevelopedand](https://www.fda.gov/drugs/developmentapprovalprocess/howdrugsaredevelopedandapproved/ucm317137.htm)
21 [approved/ucm317137.htm](https://www.fda.gov/drugs/developmentapprovalprocess/howdrugsaredevelopedandapproved/ucm317137.htm).

22 9. The active ingredients in the Products do not conform to monographs
23 for wrinkle prevention, elimination, and reduction, skin lifting, tightening, and
24 firming, or improving skin elasticity. Defendant did not subject the Products to the
25 FDA NDA process and did not obtain pre-approval from the FDA to sell the
26 Products with the skin structural representations.

27 10. Thus, even if the skin structural representations are true – on which
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1 Plaintiff takes no position – Defendant has been selling and marketing the Products
2 as drugs in violation of the “unlawful” prong of the UCL.

3 11. Plaintiff brings this action on behalf of herself and other similarly
4 situated consumers who purchased the Products seeking declaratory and injunctive
5 relief preventing the further unlawful sale of illegal and misbranded drugs until
6 Defendant obtains approved NDAs or removes the unlawful representations which
7 are injurious to the public at large and the removal or approval of which is
8 necessary to prevent future harm to the public at large. Plaintiff, on behalf of
9 herself and all other similarly situated consumers, also seeks a full refund of the
10 purchase price as the Products were being sold illegally as drugs. Alternatively,
11 Plaintiff seeks the premium paid for the Products over comparable Garnier and
12 competitor cosmetic products that do not make unlawful drug claims.

13 **JURISDICTION AND VENUE**

14 12. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). The
15 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
16 \$5,000,000 and is a class action in which there are in excess of 100 class members
17 and some members of the Class are citizens of a state different from Defendant.

18 13. This Court has personal jurisdiction over Defendant because
19 Defendant is authorized to conduct and do business in California, including this
20 District. Defendant marketed, promoted, distributed, and sold the Products in
21 California, and Defendant has sufficient minimum contacts with this State and/or
22 sufficiently availed itself of the markets in this State through its promotion, sales,
23 distribution, and marketing within this State, including this District, to render the
24 exercise of jurisdiction by this Court permissible.

25 14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)
26 because a substantial part of the events giving rise to Plaintiff’s claims occurred
27 while she resided in this judicial district. Venue is also proper under 18 U.S.C.
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1 § 1965(a) because Defendant transacts substantial business in this District.

2 **PARTIES**

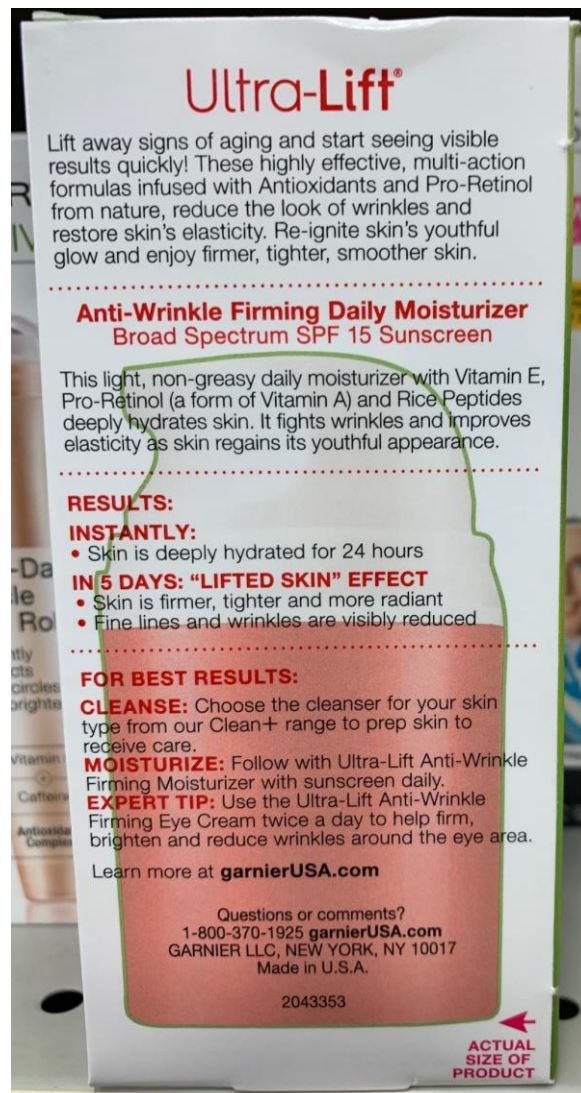
3 15. Plaintiff Nataliya Borchenko resides in Sherman Oaks, California.
4 Throughout the relevant period, Plaintiff paid approximately \$15.00 to purchase
5 Defendant's Garnier SkinActive Ultra-Lift Anti-Wrinkle Firming Night Cream
6 product from various stores in the Sherman Oaks area, including CVS, Rite-Aid,
7 and Target. Plaintiff read the Product package and selected the premium-priced
8 Product instead of less expensive night creams based on the skin structural
9 representations. As a result, Plaintiff suffered injury in fact and lost money. Now
10 that Plaintiff knows the skin structural representations had not received the
11 required FDA approval and the Product was illegally being sold, Plaintiff has not
12 purchased Defendant's Night Cream again. However, Plaintiff continues to desire
13 to purchase a night cream that provides anti-wrinkle, lifting, firming, and skin
14 elasticity benefits. And, she would purchase Defendant's Night Cream again if
15 the skin structural representations had received FDA approval and were lawfully
16 being made. Indeed, she regularly visits stores such as CVS, Rite-Aid, and
17 Target, where Defendant's Products are sold, but has been unable to determine the
18 lawfulness of the Product labels currently on the shelves. As long as Defendant
19 continues to make the skin structural representations as they currently appear,
20 then when presented with Defendant's packaging on any given day, Plaintiff
21 continues to have no way of determining whether the skin structural
22 representations have in fact been approved by the FDA.

23 16. Defendant L'Oréal USA, Inc. is a corporation organized and existing
24 under the laws of the State of Delaware. Defendant's headquarters is at 10
25 Hudson Yards, New York, NY, 10001. Defendant manufactures, distributes,
26 markets, and sells the Products to consumers throughout California.

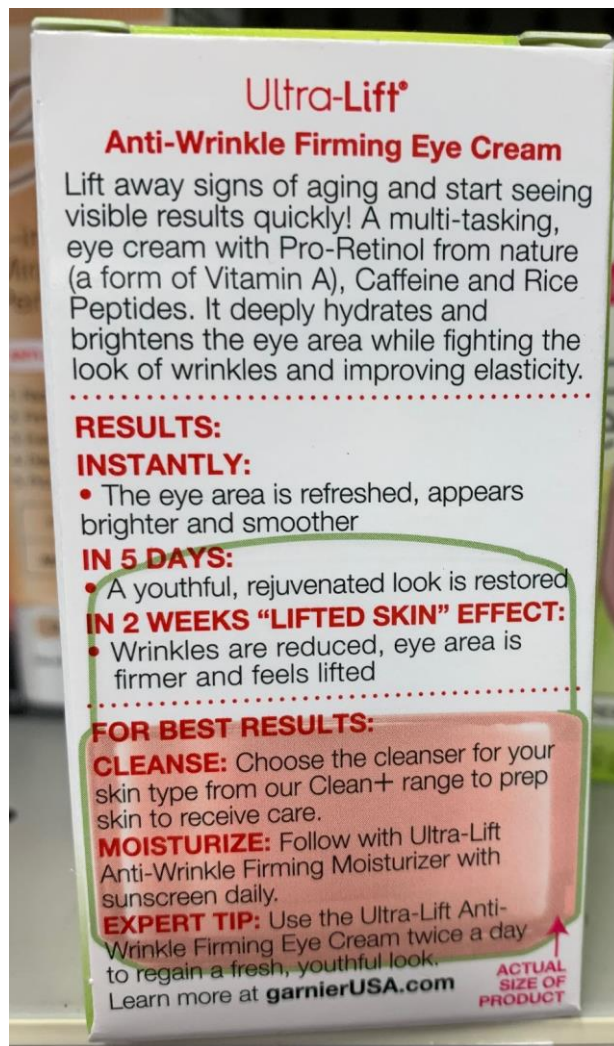
27 //

FACTUAL ALLEGATIONS

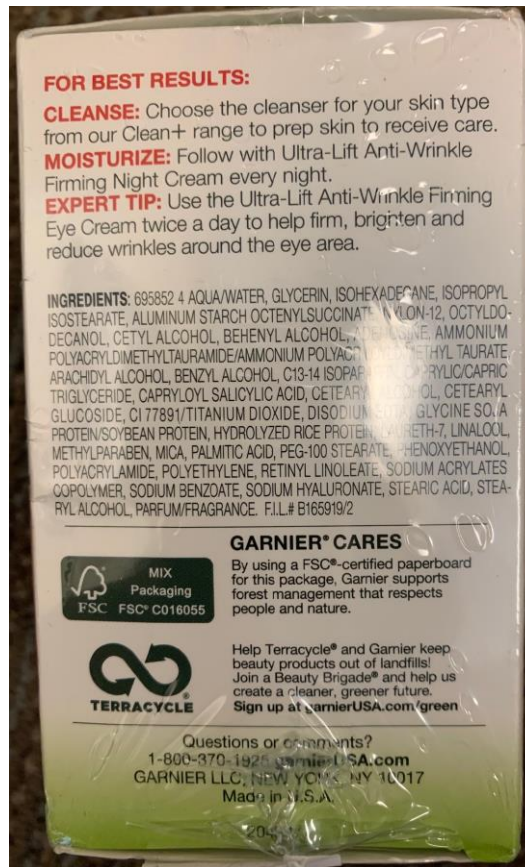
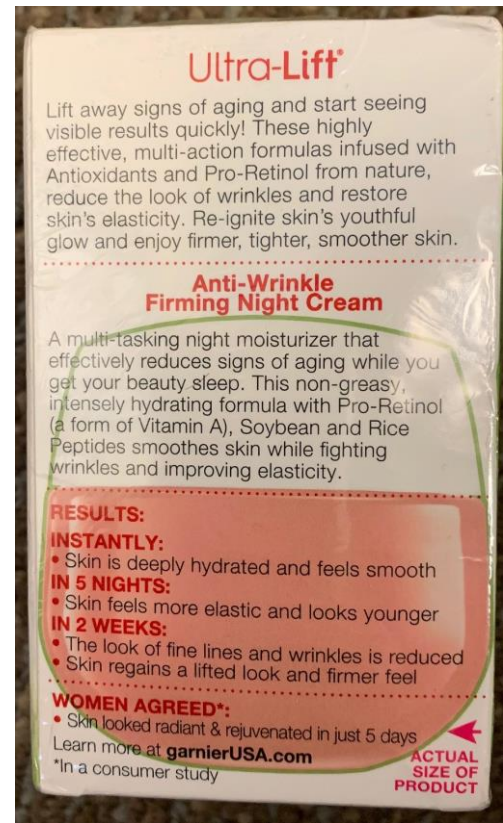
17. Defendant's skin structural representations appear prominently and conspicuously on each Product package as shown below:



(Daily Moisturizer Front and Back)



(Eye Cream Front and Back)



(Night Cream Front, Back, and Side)



(2-in-1 Serum + Moisturizer Front and Back)

Copies of representative labels are attached hereto as Exhibit A.

18. Importantly, in addition to the skin structural representations, Defendant features “Pro-Retinol” on the front of the Product labels. Certain products containing certain forms of retinol in certain strengths have been approved by the FDA as drugs. Defendant’s Products, however, have not been approved by the FDA and the form of retinol in the Products does not conform to a monograph for the represented benefits. Featuring the “Pro-Retinol” in its Products evidences Defendant’s intent to market its Products as drugs.

1 19. Further evidencing Defendant’s intent to market the Products as drugs
2 is that, unlike the “instant[]” and “overnight” cosmetic effects it promises, the skin
3 structural benefits require longer to take effect. For example, Defendant promises
4 that its Daily Moisturizer will “instantly” hydrate the skin (a cosmetic claim), while
5 the wrinkle reducing, firming, and lifting effects require “5 days” to take effect.
6 Similarly, the Eye Cream “instantly” refreshes the eye area and makes it “appear[]
7 brighter and smoother” (cosmetic claims), while the wrinkle reduction, firming, and
8 “lifted skin effect” require “2 weeks”. And, the Night Cream “[d]eeply hydrates
9 overnight” (a cosmetic claim) while the elasticity benefits take “5 nights” and the
10 wrinkle reduction, lifting, and firming effects require “2 weeks” of use. Finally, the
11 2-in-1 Serum + Moisturizer “instantly” hydrates (a cosmetic claim), but its wrinkle
12 reduction, skin tightening, lifting, and improved elasticity benefits take “2 weeks”.

13 20. Also evidencing Defendant’s intent to market the Products as drugs is
14 that Defendant sells other skin care products – including, for example, another less
15 expensive daily moisturizer – that make only cosmetic claims.

16 21. Further evidencing Defendant’s intent to market the Products as drugs
17 is that Defendant encourages consumers to use the whole line of Ultra-Lift
18 Products, stating that “For Best Results”, the Products should be used with other
19 Ultra-Lift Products.

20 22. An over-the-counter face cream or moisturizer can be a drug, a
21 cosmetic, or a combination of both. 21 U.S.C. § 359 (the categories of “drug” and
22 “cosmetic” are not mutually exclusive).

23 23. The federal Food, Drug, and Cosmetics Act (“FDCA”) (21 U.S.C.
24 §§301, *et seq.*) defines cosmetics as “articles intended to be rubbed, poured,
25 sprinkled, or sprayed on, introduced into, or otherwise applied to the human body ...
26 for cleansing, beautifying, promoting attractiveness, or altering the appearance.” 21
27 U.S.C. §321(i). The Products are cosmetics.

1 24. A cosmetic is **also** a drug if it is “intended to affect the structure or any
2 function of the body of man”. 21 U.S.C. § 321(g)(1).

3 25. California’s Sherman Law (California’s Health & Safety Code §§
4 109875, *et seq.*) parallels the FDCA in material part and adopts all nonprescription
5 drug regulations.

6 26. Like the FDCA, the Sherman Law defines a drug as “Any article other
7 than food, that is used or intended to affect the structure or any function of the body
8 of human beings.” Cal. Health & Safety Code § 109925(c).

9 27. Since at least 2012 and repeatedly thereafter, and as recently as
10 February 22, 2018, the FDA has made clear that any representation that a product
11 will prevent or remove wrinkles – such as the anti-wrinkle representations on the
12 Product labels – is a drug claim. Unlike purely cosmetic claims that promise to
13 alter the appearance of the user in a superficial way for a short period of time (e.g.,
14 hydrate, moisturize, improve appearance), drug claims – like the anti-wrinkle
15 representations – promise a material, lasting effect (e.g., “anti” meaning prevent
16 wrinkles as well as “reduce” existing wrinkles). As such, the FDA, in its industry
17 publications, explains that it has found that products “intended to affect the
18 structure or function of the body, such as the skin are drugs ... even if they affect
19 the appearance. So, if a product is intended, for example, *to remove wrinkles* or
20 increase the skin’s production of collagen, it’s a drug or a medical device.”
21 Wrinkle Treatments and Other Anti-aging Products, *available at*
22 <http://www.fda.gov/Cosmetics/ProductsIngredients/Products/ucm388826.htm>
23 (emphasis added). And, consistent with its position that anti-wrinkle claims are
24 drug claims, the FDA has sent numerous warning letters to product manufacturers
25 making such claims without FDA approval or pursuant to an established
26 monograph. *See, e.g.*, FDA’s May 26, 2017 letter to Star Health & Beauty, LLC,
27 *available* *at*

1 <https://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2017/ucm563230>
2 .htm (“Stimulate ... reduction of deep wrinkles” and “reduces wrinkles” indicate
3 that products are drugs); FDA’s August 29, 2016 letter to ZO Skin Health Group,
4 LLC, *available at*
5 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm521019.htm
6 (“reduce wrinkle depth” indicates product is a drug); FDA’s April 14, 2016 letter to
7 Hollywood Skincare International, Inc. *available at*
8 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2016/ucm504411.htm
9 (“removes wrinkles instantly” indicates product is a drug”); FDA’s October 5, 2012
10 letter to Bioque Technologies, *available at*
11 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm323767.htm
12 (“[A]chieve ... a 37% reduction in fine lines and wrinkles” and “repairing existing
13 wrinkles” indicate that products are drugs); FDA’s October 5, 2012 letter to Avon
14 Products, Inc., *available at*
15 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm323738.htm
16 (“help dramatically reverse visible wrinkles” indicates that product is a drug); and
17 FDA’s September 7, 2012 letter to Lancome, USA, *available at*
18 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm318809.htm
19 (“See significant deep wrinkle reduction in ... skin” indicates that product is a
20 drug).

21 28. The FDA has also warned that representations claiming that a product
22 will “lift” the skin – such as the lift representations on Defendant’s Products – are
23 drug claims. *See, e.g.*, FDA’s Feb 12, 2015 letter to Strivectin Operating Company,
24 *available at*
25 www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm436692.htm
26 (“[n]ow even more tightening, lifting” and “providing noticeable lift and
27 resistance to gravity” indicate neck cream is a drug).
28

29. The FDA has also warned that representations claiming that a product will “tighten” or “firm” the skin – such as the firming representations on Defendant’s Products – are drug claims. *See, e.g.*, FDA’s Feb 12, 2015 letter to Strivectin Operating Company, *available at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm436692.htm (“[n]ow even more tightening, lifting” indicates neck cream is a drug); FDA’s October 5, 2012 letter to Avon Products, Inc., *available at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm323738.htm (“[H]elp tighten the connections between skin’s layers” indicates face cream is a drug); FDA’s October 5, 2012 letter to Bioque Technologies, *available at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm323767.htm (“With regular use and in as little as four weeks, achieve a 42% increase in skin’s firmness” indicates skin cream is a drug).

30. And, the FDA has also warned that representations claiming that a product will improve skin elasticity – such as the elasticity representations on Defendant’s Products – are drug claims. *See, e.g.*, October 5, 2012 letter to Bioque Technologies, *available at* www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm323767.htm (representation that a product “fuel[s] the rebuilding of skin structure and elasticity” indicates product is a drug).

31. As the foregoing FDA publication and warning letters demonstrate, the FDA requires manufacturers making identical or substantially similar structural skin representations as Defendant to submit evidence of safety and effectiveness and obtain an approved NDA prior to sale as required by 21 U.S.C. §§ 321(p) and 355(a). *See also* Cal. Health & Safety Code §§ 109980(a) and 111550.

32. Integral to the NDA process is demonstrating that the products are generally recognized as safe for their intended uses – here, wrinkle prevention,

1 removal, and reduction, skin lifting, tightening, and firming, and improving skin
2 elasticity. *See* FDA, Over-the-Counter (OTC) Drug Monograph Process, *available*
3 *at*
4 <http://www.fda.gov/drugs/developmentapprovalprocess/howdrugsaredevelopedand>
5 [approved/ucm317137.htm](http://www.fda.gov/drugs/developmentapprovalprocess/howdrugsaredevelopedand); FDA, How Drugs are Developed and Approved,
6 *available* *at*
7 [www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandAp](http://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ucm2007006.htm)
8 [proved/ucm2007006.htm](http://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ucm2007006.htm) (it is the responsibility of the company seeking to market
9 a drug to test it and submit evidence that it is safe and effective). By failing to have
10 its Products screened and approved for safety, Defendant is putting consumers at
11 risk of adverse reactions and other ill effects particularly because one of the
12 Products is to be applied to the sensitive eye area which is readily susceptible to
13 infection.

14 33. By making the unlawful representations Defendant is also able to
15 charge a substantial premium for its Products over what it and its competitors
16 charge for similar cosmetic products which, for example, claim only to moisturize
17 and visibly improve the skin's appearance or look and do not make the unlawful
18 drug claims. Consequently, California consumers – like Plaintiff – are purchasing
19 premium priced unlawful drugs not deemed to be safe or effective for preventing,
20 removing, and reducing wrinkles, skin lifting, tightening, and firming, and
21 improving skin elasticity as represented, rendering them valueless or, at a
22 minimum, overpriced.

23 34. For all these reasons, Defendant should be enjoined from selling the
24 Products with the unlawful skin structural representations until Defendant obtains
25 an approved NDA or removes the drug claims which are injurious to the public at
26 large and Plaintiff and the Class should be refunded their money or, at a minimum,
27 the premium they paid to purchase the Products.
28

1 **CLASS DEFINITION AND ALLEGATIONS**

2 35. Plaintiff brings this action on behalf of herself and all other similarly
3 situated consumers pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of
4 Civil Procedure and seeks certification of the following Class:

5 All California consumers who within the applicable statute
6 of limitations period until the date notice is disseminated,
7 purchased the Products.

8 Excluded from this Class are Defendant and its officers,
9 directors and employees, and those who purchased the
10 Products for the purpose of resale.

11 36. **Numerosity.** The members of the Class are so numerous that joinder
12 of all members of the Class is impracticable. Plaintiff is informed and believes that
13 the proposed Class contains thousands of purchasers of the Products who have been
14 damaged by Defendant's conduct as alleged herein. The precise number of Class
15 members is unknown to Plaintiff.

16 37. **Existence and Predominance of Common Questions of Law and**
17 **Fact.** This action involves common questions of law and fact, which predominate
18 over any questions affecting individual Class members. These common legal and
19 factual questions include, but are not limited to, the following:

20 (a) whether Defendant's alleged conduct is unlawful and constitutes
21 violations of the laws asserted; and

22 (b) whether Plaintiff and Class members are entitled to appropriate
23 remedies, including restitution and injunctive relief.

24 38. **Typicality.** Plaintiff's claims are typical of the claims of the members
25 of the Class because, *inter alia*, all Class members were injured through the
26 uniform misconduct described above. Plaintiff is also advancing the same claims
27 and legal theories on behalf of herself and all Class members.

28 39. **Adequacy of Representation.** Plaintiff will fairly and adequately

1 protect the interests of Class members. Plaintiff has retained counsel experienced
2 in complex consumer class action litigation, and Plaintiff intends to prosecute this
3 action vigorously. Plaintiff has no adverse or antagonistic interests to those of the
4 Class.

5 40. **Superiority.** A class action is superior to all other available means for
6 the fair and efficient adjudication of this controversy. The damages or other
7 financial detriment suffered by individual Class members is relatively small
8 compared to the burden and expense that would be entailed by individual litigation
9 of their claims against Defendant. It would thus be virtually impossible for
10 members of the Class, on an individual basis, to obtain effective redress for the
11 wrongs done to them. Furthermore, even if Class members could afford such
12 individualized litigation, the court system could not. Individualized litigation
13 would create the danger of inconsistent or contradictory judgments arising from the
14 same set of facts. Individualized litigation would also increase the delay and
15 expense to all parties and the court system from the issues raised by this action. By
16 contrast, the class action device provides the benefits of adjudication of these issues
17 in a single proceeding, economies of scale, and comprehensive supervision by a
18 single court, and presents no unusual management difficulties under the
19 circumstances here.

20 41. Plaintiff seeks injunctive and equitable relief on behalf of the entire
21 Class, on grounds generally applicable to the entire Class, to enjoin and prevent
22 Defendant from engaging in the acts described and requiring Defendant to provide
23 full restitution to Plaintiff and the Class members.

24 42. Unless a Class is certified, Defendant will retain monies received as a
25 result of its conduct that were taken from Plaintiff and Class members.

26 43. Unless an injunction is issued, Defendant will continue to commit the
27 violations alleged, and the members of the Class and the general public will
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1 continue to purchase products not lawfully being sold and not recognized as safe.

2 **COUNT I**

3 **Violation of Business & Professions Code § 17200, *et seq.***

4 **Unlawful Business Acts and Practices**

5 44. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

6 45. Plaintiff brings this claim individually and on behalf of the Class.

7 46. The Unfair Competition Law, Business & Professions Code § 17200, *et seq.* (“UCL”), prohibits any “unlawful” business act or practice.

9 47. As alleged herein, Defendant engaged in and continues to engage in
10 illegal conduct by unlawfully making skin structural representations about the
11 Products, rendering them drugs, without monographs for the active ingredients and
12 without obtaining required FDA approval through the NDA process. Defendant
13 committed unlawful business practices by violating California’s Health & Safety
14 Code §§ 109875 *et seq.* and California’s Sherman Food, Drug and Cosmetic Law,
15 which materially adopts the relevant provisions of the Food Drug and Cosmetic
16 Act. Plaintiff reserves the right to allege other violations of law, which constitute
17 other unlawful business acts or practices. Such conduct is ongoing and continues to
18 this date. Plaintiff and all Class members were exposed to the unlawful skin
19 structural representations at the point of purchase.

20 48. As alleged herein, Plaintiff has suffered injury in fact and lost money
21 or property as a result of Defendant’s conduct because she saw and read the skin
22 structural representations, purchased the Garnier SkinActive Ultra-Lift Anti-
23 Wrinkle Firming Night Cream Product based on the skin structural representations,
24 and she would not have done so but for Defendant’s skin structural representations
25 which she now knows were unlawful. In addition, but for Defendant’s illegal
26 conduct, the Products, including the Night Cream product that Plaintiff purchased,
27 would not have been on the market as anti-wrinkle, lifting, firming/tightening, and
28

1 elasticizing products.

2 49. The NDA process is intended to ensure that if the consuming public
3 (e.g., Plaintiff) are sold a product that is a drug as defined under the FDA law and
4 regulations that is not generally recognized as safe and effective under an approved
5 monograph, it will have been put through the rigorous NDA process to ensure that
6 it is safe and effective.

7 50. The UCL unlawful prong is intended to hold defendants who engage in
8 unlawful conduct accountable for their violations by, among other things, paying
9 full compensation to consumers who have purchased such illegally sold products
10 that, by virtue of being banned from sale to the public, are valueless or, at a
11 minimum, overpriced.

12 51. Plaintiff and the Class members are entitled to the monies Defendant
13 wrongfully obtained in the amount of the full purchase price or, at a minimum, the
14 premium they paid for the Products.

15 52. Plaintiff, on behalf of herself and all similarly situated consumers,
16 seeks restitution of all money paid for Defendant's illegally sold Products or, at a
17 minimum, the premium paid for the Products, consistent with Business &
18 Professions Code § 17203.

19 53. Plaintiff also seeks, on behalf of herself, all similarly situated
20 consumers and the public at large, declaratory relief and an injunction to enjoin and
21 prevent Defendant from engaging in the acts described, and all other relief this
22 Court deems appropriate, consistent with Business & Professions Code § 17203.

23 **PRAYER FOR RELIEF**

24 Wherefore, Plaintiff prays for a judgment:

- 25 A. Certifying the Class as requested herein;
26 B. Issuing an order declaring that Defendant is in violation of the UCL;
27 C. Enjoining Defendant's conduct;
28

- 1 D. Awarding appropriate restitution to Plaintiff and the proposed Class
2 members;
3 E. Awarding Plaintiff reasonable attorneys' fees and expenses pursuant to
4 Cal. C.C.P. § 1021.5; and
5 F. Awarding such other and further relief as this Court may deem just and
6 proper.
7

8 Dated: February 26, 2019

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